

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

G.L. MILLIKEN PLASTERING^{1/}

Employer

and

Case 7-RC-22439

**LOCAL 9, INTERNATIONAL UNION OF BRICKLAYERS
AND ALLIED CRAFTWORKERS, AFL-CIO^{2/}**

Petitioner

and

**LOCAL 67, OPERATIVE PLASTERERS' AND CEMENT
MASONS' INTERNATIONAL ASSOCIATION OF THE
UNITED STATES AND CANADA, AFL-CIO**

Intervenor Local 67

and

**LOCAL 16, OPERATIVE PLASTERERS' AND CEMENT
MASONS' INTERNATIONAL ASSOCIATION OF THE
UNITED STATES AND CANADA, AFL-CIO**

Intervenor Local 16

APPEARANCES:

John Adam, Attorney, of Southfield, Michigan, for the Petitioner.
Eric Frankie, Attorney, of Detroit, Michigan, for the Intervenor.

DECISION AND ORDER

¹ The Employer did not appear at the hearing.

² The name of the Petitioner appears as amended at the hearing.

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding³, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved herein claim to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of approximately six full-time and regular part-time plasterers employed by the Employer working at or out of its facility located at 784 South Main Street, Chelsea, Michigan; but excluding all carpenters, laborers, managers, guards, and supervisors as defined in the Act. Intervenor Local 16 asserts that it and the Employer are parties to a Section 9(a) collective bargaining agreement, signed by the parties on June 2, 2002, and effective from June 1, 2002 through May 31, 2004, which bars the instant petition. The Petitioner's contentions are three-fold: (1) there is no evidence of any signed contract between the Employer and Intervenor upon which to assert contract bar; (2) such contract, even if signed, is an attempt to carve out very narrow geographical areas and as such cannot act as a bar, and (3) even if such contract is found to act as a bar it would bar an election only in the geographical areas covered by the contract.

I find that a contract bar exists in this case based on the current contract between the Employer and Intervenor Local 16.

The Washtenaw Contractors Association (WCA), is a multi-employer association formed for purposes of collective bargaining. The record indicates that the Employer is a member of the WCA and has delegated its authority to the WCA to negotiate and sign

³ The Petitioner and Intervenor Local 16 filed briefs, which were carefully considered.

collective bargaining agreements with the Petitioner. The WCA and the Petitioner are currently parties to a Section 8(f) agreement effective by its terms from August 1, 2000 through July 31, 2003. This Section 8(f) agreement covers work performed in certain areas in the State of Michigan, including all of Washtenaw County and eight townships in Livingston County.⁴ The Employer, through the WCA, and the Petitioner have enjoyed a collective bargaining relationship since about 1997.

The Employer and Intervenor Local 16 entered into a Section 9(a) collective bargaining agreement on about June 1, 2002, effective by its terms from June 2, 2000 through May 31, 2004 covering plastering work performed in the Lansing/Jackson area.⁵ The signature page of the parties' agreement, absent the full agreement, was admitted into the record at the hearing. The signature page entitled "Article XV, Termination", states that the parties agree to abide by the 2002-2004 collective bargaining agreement between Local 16 and the Lansing/Jackson Area Plastering Contractors. The page is identical to the last page of the full collective bargaining agreement entered into evidence in another case.⁶

Intervenor Local 16 contends that its collective bargaining agreements with Lansing/Jackson Area Contractors and Flint Area Contractors⁷ dated 2002-2004 are Section 9(a) pacts that bar the instant petition. In the construction industry, parties may create a relationship pursuant to either Section 9(a) or Section 8(f) of the Act. In the absence of evidence to the contrary, the Board presumes that the parties intend their relationship to be governed by Section 8(f), rather than Section 9(a), and imposes the burden of proving the existence of a Section 9(a) relationship on the party asserting that such a relationship exists. *H.Y Floors & Gameline Painting*, 331 NLRB 304 (2000); *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988).

To establish voluntary recognition in the construction industry pursuant to Section 9(a), the Board requires evidence (1) that the union unequivocally demanded recognition as the employees' Section 9(a) representative, and (2) that the employer unequivocally accepted it as such. *H.Y Floors & Gameline Painting*, supra. The Board also requires a contemporaneous showing of majority support by the union at the time Section 9(a)

⁴ The eight townships are Unadilla, Putnam, Hamburg, Green Oak, Iosco, Marion, Genoa, and Brighton Township (including the city of Brighton).

⁵ The Lansing/Jackson area covers the counties of Jackson, Clinton, Eaton and Ingham, and the northwestern portion of Livingston County, including the townships of Conway, Cohoctah, Handy, Howell and the city of Howell. The Flint area covers the counties of Genesee and Shiawassee and the northeastern portion of Livingston County, including Deerfield, Tyrone, Osceola and Hartland Townships.

⁶ The full agreement was entered into evidence in *Spray On, Inc.*, Case 7-RC-22435, which was heard on the same day.

⁷ The Lansing/Jackson Area Contractors agreement with Local 16 contains a "traveler" clause in Art. XII, Sec. 3, which Intervenor Local 16 argues subjects the Employer to the terms and conditions of the agreement between Flint Area Contractors and Local 16 regarding the Employer's employees found to be working in the Flint area.

recognition is granted. *Golden West Electric*, 307 NLRB 1494, 1495 (1992). However, as to this contemporaneous showing, the Board has held that an employer's acknowledgment of such support is sufficient to preclude a challenge to majority status by an employer. *H.Y Floors & Gameline Painting*, supra; *Oklahoma Installation Co.*, 325 NLRB 741 (1998). If a construction industry employer extends Section 9(a) recognition to a union, and six months elapse without a charge or petition being filed, the Board will not entertain a claim that majority status was lacking at the time of recognition. *Casale Industries, Inc.*, 311 NLRB 951, 953 (1993).

In the instant matter, I find that Intervenor Local 16 and the Employer reached a Section 9(a) agreement in the Lansing/Jackson Area Contractors agreement on June 1, 2000, which contract is effective by its terms from June 1, 2000 through May 31, 2004, covering plastering work performed in the Lansing/Jackson area. In reaching this conclusion, I do not rely on any extrinsic evidence linking the signature page to the Lansing/Jackson Area contractors agreement. The signature page clearly references that argument and bears no doubt as to the document containing the terms of the parties' agreement. *Waste Management of Maryland, Inc.*, 338 NLRB No. 155 (2003). By virtue of the traveler clause contained in the Lansing/Jackson Area Contractors agreement, this Section 9(a) recognition was arguably extended to the Flint area to covered by the Flint Area Contractors agreement.

Although the geographical units in these agreements are limited to the Lansing/Jackson and Flint areas, they cover appropriate units based on bargaining history. The Lansing/Jackson Area Contractors agreement serves as a contract bar to an election among the Employer's plasterers, regardless of the geographic limitation contained therein. *Pontiac Ceiling & Partition Co.*, 337 NLRB No. 16 (2001). I see no basis for perpetuating a geographic division of plasterers into separate units by ordering an election in only those counties which are not covered by the contract. See, *Dundee's Seafood, Inc.*, 221 NLRB 1183 (1976); *Groendyke Transport*, 171 NLRB 997, 998 (1968); *John Sunduall & Co.*, 149 NLRB 1022 (1964).

Based upon the above and the entire record in this matter,

IT IS HEREBY ORDERED, that the petition is dismissed.⁸

Dated at Detroit, Michigan, this 9th day of May 2003.

(SEAL)

/s/ Joseph A. Barker
Joseph A. Barker
Acting Regional Director
National Labor Relations Board
Patrick V. McNamara Federal Building
477 Michigan Avenue –Room 300
Detroit, Michigan 48226

Classification

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⁸ Under the provisions of the Board's Rules and Regulations, a request for review of the Decision may be filed with the National Labor Relations Board, address to **Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by May 23, 2003.